

OFFICIAL ADVERTISING

SUPREME COURT DECISION

No. 1686

The Supreme Court of the State of Nevada.

Appealed from 1st Judicial District Court, Lyon County.

G. F. Fox, Plaintiff & Respondent.

vs.

Mrs. Harriet Bernard as executrix of the last will and testament of William B. Bernard, deceased, Mrs. Harriet Orth and J. C. Orth, Defendants and Appellants.

C. E. Mack and Geo. D. Pyne, Attys. for Respondent.

John Lohrhopf and A. Chantz, for Appellants.

Decision

On February 18, 1893, the plaintiff leased \$100 to William Bernard, now deceased, and to secure the payment thereof he executed to plaintiff on that day the lands described in the complaint, and at the same time plaintiff executed to him a bond for a deed whereby he agreed to re-convey the property on or before February 18, 1898, provided that he was paid on or before that date \$100, and also \$25 annually. On February 8, 1896 plaintiff executed to Bernard the additional sum of \$500 and accepted as security for \$100, and interest a deed made to plaintiff at the time the \$100 was advanced, and by release made in writing acknowledged and recorded. Bernard then relieved him from all obligations resulting from the bond dated February 18, 1893, and thereupon plaintiff executed to Bernard a new bond, dated February 8, 1896, mentioned that plaintiff would make and deliver a good and sufficient conveyance of the property to Bernard, provided plaintiff was paid \$1000 on or before January 1, 1900 and also \$50 annually, and further provisioned that if Bernard paid these amounts and the taxes he would be entitled to the use and possession of the premises in receipt and the statement or admission of Bernard a short time before his death indicate that the only payments were on interest to the day of February 1897. He died the following year and letters testamentary were issued to his widow Mrs. Harriet Bernard who has since married C. J. Orth. Plaintiff's demand arising out of the above transactions was presented against the estate and by her as executrix was rejected on August 29, 1898. There is testimony indicating that she had previously recognized the demand by endeavoring to borrow money for its payment. On July 24, 1901 the property was set over to her by decree of distribution. From a judgment decreeing the deed to plaintiff to be a mortgage and ordering a foreclosure and sale of the premises to satisfy the amount, \$1731.25 and \$540 costs, found due to plaintiff, she appeals.

The well settled doctrine that a deed executed merely for the purpose of securing a debt will be construed as a mortgage is not assailed, but for appellant it is contended that as suit was not brought until April, 1904, more than six years after the last bond and the giving of the last bond on February 8, 1896, and more than four years after the time, January 1, 1900 fixed for a conveyance thereunder conditioned on payment, the action is barred by the statute of limitations. It is said that by executing a written release of the first bond and accepting a new one instead, at the time he borrowed the last amount, \$500, Bernard did not sign any writing agreeing to pay or acknowledging a debt, and that therefore the obligation to pay on his part was merely verbal and would be barred in four years. We do not so view that transaction. Most instruments in daily use, such as deeds, mortgages, notes, orders, drafts and checks are signed by only one of the parties, but are not for that reason verbal nor half verbal. Although Bernard executed no note or writing agreeing to pay any money, he signed a deed absolute in terms conveying the property to plaintiff, and by this deed and the decree no more is sought than he under his signature obligated himself to yield. In equity the extension of the time for a conveyance by plaintiff, given by the surrender of the first bond and the execution of a new one ought to be considered as effective as if plaintiff

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iff had conveyed the property to Bernard and taken a new deed from him, which would have left the title in plaintiff as it now stands. It was not necessary to have these extra deeds and if they had been executed they would not have varied the time for bringing suit and the initiation of the running of the statute which was controlled by the last bond and the date therein fixed and extended for payment and reconveyance.

Plaintiff is fortified with a writing for all that is awarded him by the judgment and for more if the property is worth more.

The loan and giving of the security which vary the unconditional terms of the deed, and which are shown verbally, are facts favorable to appellant which it would have been incumbent upon her to prove if plaintiff had sued in ejectment for the property and introduced the deed. The bringing of the action four years and four months after January 1, 1900, the time fixed in the last bond for a reconveyance conditioned on payment, was not too late.

It is also urged that suit was not begun within the time required by the provisions of the Probate Act after the rejection of the claim by the executrix. Whether this is so is immaterial for although she as executrix is named as a party defendant, the allegations of the complaint and the decree may be considered as running against the property only. No judgment for any deficiency after sale or otherwise against the estate is demanded or given by the decree, which is directed only against the premises and plaintiff's rights to this extent would not be curtailed nor affected by failure to present a claim to the executrix, nor by her rejection of the claim filed, nor by his omission to sue within the time prescribed for commencing actions on rejected claims against estates of deceased persons, as is necessary when it is desired to reach the assets of the estate.

In *Cookes v. Culbertson*, 9 Nev. 297, as here, a deed was given as security for a loan which was not evidenced in writing. It was said in the opinion "The remedy upon the debt is barred by the statute, but the debt was not thereby extinguished; and as the statute of limitations of this State applies to suits in equity as well as actions at law, the creditors could have enforced payment by foreclosure of the mortgage within four years after the cause of action accrued. He had two remedies, one upon the debt, the other upon the mortgage; by losing one he does not necessarily lose the other." Since the rendition of the decision the time for commencing actions on written instruments has been extended from four to six years and under well recognized principles plaintiff was allowed that length of time after the date fixed for payment of the \$1000 and for the termination of the bond or a reconveyance, which was January 1, 1900. As said in *Borden v. Clow*, 21 Nev. 278, "It is a rule in regard to the statute of limitations that the statute begins to run when the debt is due and an action can be instituted upon it." Under the argument for appellant the four years from the final loan on February 8, 1896 to the time for payment of the \$1000 under the bond on January 1, 1900, would be deducted from the six years allowed for bringing suit, and on that theory if the maturity of the loan had been more than six years, instead of four plaintiff's cause of action would have been barred before it accrued.

The judgment of the District Court is affirmed.

TALBOT, J.

We concur.

Fitzgerald, C. J.

Norcross, J.

The complete story of the Great San Francisco Earthquake, written by eye witnesses, complete set of actual photographs, big book, best terms, big money, agents are taking from 15 to 40 orders a day. Credit given, freight paid. Complete outfit free, six cents for postage. Now ready. Free book for yourself. The Columbia House, Chicago.

Anything you want in the way of rice pastry? Leave your order at RICHARDSON'S

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OFFICE COUNTY AUDITOR

To the Honorable, the Board of County Commissioners, Gentlemen:

In compliance with the law, I herewith submit my quarterly report showing receipts and disbursements of Ormsby County, during the quarter ending Dec. 30, 1905.

Quarterly Report.

Ormsby County, Nevada.

Balance in County Treasury at end of last quarter 39108 77%

County license 699 15
Gambling license 1057 50
Liquor license 582 00
Fees of Co. officers 527 05
Fines in Justice Court 125 00
Rent of Co. building 302 50
2nd. Inst. taxes 103 43%
Siot machine license 282 00
S. A. apportionment school money 5424 48
Delinquent taxes 181 40
Cigarette license 42 30
Douglas Co., road work 13 00
Keep W. Bowen 45 00
Keep C. B. Hall 15 00
Total 45213 59%

Recapitulation

April 1st, 05. Balance cash on hand \$31277 17%
State fund 713 73%
General fund 4212 28%
Salary fund 736 64
Co. school fund 47 69
Co. school fund Dist. 1 19158 48%
Co. school fund Dist. 2 189 14
Co. school fund Dist. 3 277 61%
Co. school fund Dist. 4 212 77
State school fund Dist. 1 3859 85
State school fund Dist. 2 216 18
State school fund Dist. 3 433 75
Agl. Assn. fund A. 686 12%
Agl. Assn. fund B. 32 16%
Agl. Assn. fund Spcl. 1529 54
Co. school fund Dist. 1 Spcl. 7390 29
Co. school fund Dist. 3 Library 103 40
Co. school fund Dist. 4 Library 6 50
Total \$31277 17%
J. B. VA NETTEN
County Treasurer.

Disbursements

General fund 4203 67
Salary fund 2560 00
County school fund 60 00
Co. school fund Dist. 1 333 65
Co. school fund Dist. 2 173 10
Co. school fund Dist. 3 19 85
Co. school fund Dist. 4 122 00
State school fund Dist. 1 2611 65
State school fund Dist. 2 730 00
State school fund Dist. 3 120 00
State school fund Dist. 4 110 00
Co. school fund 60 00
Co. school fund Spcl. building 6377 50
Total 16936 42

Recapitulation

Cash in Treasury January 1, 1906 39108 77%
Receipts from January 1st to March 31st 1906 10104 81%
Disbursements from January 1st to March 31st 1906 16936 42
Balance cash in Co. Treasury April 1st 1906 31277 17%
H. DIETERICH
County Auditor

JOURNAL OF PROGRESS OF SAN FRANCISCO

The Southern Pacific company has already undertaken the work, in behalf of the entire Pacific Coast, of dispelling erroneous and damaging impressions, that effect the entire Pacific Coast, growing out of the recent disaster at San Francisco. Announcement is made that in this public service the co-operation of public men and of the press is assured.

While San Francisco was burning, when it was impossible to verify rumors or to substantiate facts, stories were circulated that found their way into print that, if uncontradicted, will injure not only California, but also the other States of the Pacific Coast.

Nothing but the truth is necessary to point out that no material industry—agriculture, horticulture, viticulture, mining, manufacturing, commerce—has suffered interruption or permanent injury. A series of articles prepared by men whose reputations command respect and inspire confidence, is required at this time. Such will be arranged for and will be circulated all over the world by the Southern Pacific Company. The Appeal will, in sympathy and in justice to the stricken State of California, give them all possible publicity. Their educational value will be great.

Anything you want in the way of nice pastry? Leave your order at RICHARDSON'S

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TONOPAH RAILROAD COMPANY

Philadelphia, May 18, 1906.
NOTICE is given to bondholders of the Tonopah Railroad Company that in accordance with the terms of the bonds and the trust mortgage securing the same, all of the outstanding 6 per cent first mortgage bonds secured by the Trust Mortgage to the Land Title and Trust Company dated January 26, 1904, have been called for redemption, and will be paid at the office of the undersigned at 102½ per cent and interest on July 1st, 1906, at which date interest will cease.

THE LAND TITLE AND TRUST COMPANY

S W cor Broad and Chestnut streets PHILADELPHIA, Penna.

PROPOSALS FOR

FENCE AND COPING

Proposals will be received by the State Board of Military Auditors to construct a concrete coping and furnish and place on said coping an iron fence on the exterior boundary of block 2 of Sears Thompson and Bear division of Carson City, Nevada up to 12 o'clock m., on Saturday the 16th day of June, 1906.

No bid will be considered unless accompanied by a bond or a certified check in the sum of one thousand dollars for the faithful performance of the work.

Plans and specifications can be had of the clerk of the board.

Proposals should be addressed to S. H. Day, Clerk of the Board of Military Auditors, and endorsed, "proposals for Fence and Coping."

The board reserves the right to reject any or all bids.

By order of the State Board of Military Auditors. S. H. Day, Clerk, May 26, 1906.

In the Matter of the Estate of Mary Hopper, Deceased.

Pursuant to an order of said Court, made on the 27th day of April, A. D. 1906, notice is hereby given that Saturday, the 12th day of May, A. D. 1906, at 10 o'clock A. M. of said day, at the Court-room of said Court, at the Court-house, in the City of Carson, County of Ormsby, have been appointed as the time and place for proving the reputed lost Will and testament of said Mary Hopper, deceased, and for hearing the application of Margaret Lloyd, for the issuance to her of Letters Testamentary, when and where any person interested may appear and contest the said Will, and many file objections in writing to the granting of Letters Testamentary to said petitioner. Dated, April 27th, 1906.

H. B. Van Etten, Clerk
Hartson & Moran, Attorneys for Petitioner.

COUNTY CLAIMS

Claims allowed by the County Commissioners for the month of May, 1906, for Ormsby county:

J. P. Woodbury, salary \$25 00
Ed. Regan, salary 25 00
James Easton, salary 25 00
Wm. Kinney, salary 250 00
H. B. Van Etten, salary 150 00
H. Dieterich, salary 120 00
E. E. Roberts, salary 100 00
G. N. Folsom, salary 60 00
A. D. Grant, salary 50 00
John Savage, janitor 60 00
John McGillis, salary 90 00
Chas. W. R. von Radesky, salary 50 00
J. E. Mack, salary 25 00
Carson Water Co., water 12 50
W. U. Tel. Co. rent clock 1 00
H. R. Mighels, county printing 40 00
Carson Gas Co., gas 18 80
Sunset T. T. Co. phone 1 50
A. J. Millard, plumbing p f 9 15
Meyers Merc. Co., mdse p f 71 26
H. C. Cattlemann, grain p f 7 05
R. Crow, blksmith p f 4 00
Otto T. Schulz, meat p f 14 05
John W. Wiggins, hay p f 10 00
Ed. Burlington, shoes p f 8 50
Rasmus Peterson, road work 36 00
A. P. Dority, road work 13 50
Emil Herring, road work 9 00
Chris Johnson, road work 13 00
Alex Shearer, road work 24 00
Job Smith, road work 15 00
Chris Johnson, road work 18 00
Jas. Logan, dep. sheriff 6 00
Meyers Merc. Co., mdse 1 60
S. N. W. & L. Co. lumber 5 13
Joe Roehon, meals co. jail 2 50
H. B. Van Etten, cash adv. 2 50
D. E. Morton, cement work 141 00
E. J. Walsh, mdse 22 45
E. J. Walsh, hoops 7 03
F. L. Winter, sawing wood 6 38
E. J. Walsh, mdse "Lundberg" 8 40
Lena B. Schulz, school census 5 00
D. A. Small, blacksmithing 3 50
John Dodson, plowing race track 25 00

ANNUAL STATEMENT

Of the Pacific Mutual Life Insurance Company of California, 508 Montgomery Street, San Francisco, Cal.

Capital paid up \$ 500,000 00
Assets 8,569,223 28
Liabilities, exclusive of capital and net surplus 7,959,049 30
Income
Premiums 2,956,678 25
Other sources 370,578 07
Total income 1905 3,327,256 32
Expenditures
Losses 680,929 05
Dividends 244,343 79
Other expenditures 1,483,208 91
Total expenditures 1905 2,408,481 75
Business 1905
Risks written 178,665,940 00
Premiums received 1,378,773 74
Losses incurred 740,782 90
Nevada Business
Risks written 315,225 00
Premiums received 5,425 17
Losses paid 4,678 13
Losses incurred 4,648 13
RICHARD J. MIER, Asst. Sec.

On June 6th and 7th, July 2nd and 3rd, August 7th, 8th and 9th, and September 8th and 9th, special low round trip rates will be in effect to all points East, final returning limit 90 days, but not later than October 31st. Colorado Common Points \$ 55 00
Missouri River 60 00
Mississippi River 60 00
Chicago 72 50
Washington and Baltimore 107 00
New York 108 50
For particulars see any Agent, or address, D. S. TAGGART
D. F. & P. A., Reno, Nevada J5

OFFICIAL ADVERTISING

ANNUAL STATEMENT

Of The Continental Casualty Company

Of Hammond Indiana.
General office, Chicago, Ills.

Capital (paid up) \$ 300,000 00
Assets 1,708,611 28
Liabilities, exclusive of capital and net surplus 1,157,641 70
Income
Premiums 2,129,749 63
Other sources 39,476 73
Total income, 1905 2,169,226 36
Expenditures
Losses 993,904 82
Dividends 16,500 00
Other expenditures 1,113,131 64
Total expenditures, 1905 2,123,536 46
Business 1905
Risks written none
Premiums 2,633,875 93
Losses incurred 1,009,644 51
Nevada Business
Risks written none
Premiums received 20,025 56
Losses paid 8,544 59
Losses incurred 8,624 59
A. A. SMITH, Secretary.

OFFICIAL COUNT OF STATE FUNDS.
STATE OF NEVADA.
County of Ormsby, s. s.
James G. Sweeney, being duly sworn, severally say that they are members of the Board of Examiners of the State of Nevada, that on the 31st day of May, 1906, they, (after having ascertained from the books of the State Controller the amount of money that should be in the Treasury) made an official examination and count of the money and vouchers for money in the State Treasury of Nevada and found the same correct as follows:
Coin 285,559 10
Paid coin vouchers not returned to Controller 22,292 37
Total 307,851 47
State School Fund Securities.
Irredeemable Nevada State School bond 380,000 00
Mass. State 3 per cent bonds 537,000 00
Nevada State Bonds 254,700 00
Mass. State 3½ per cent bonds 313,000 00
United States Bonds 215,000 00
Total 2,006,551 47
James G. Sweeney
John Sparks
Subscribed and sworn before me this 31st day of May, T. D. 1906
J. Doane,
Notary Public, Ormsby County, Nev.

ASSESSMENT NOTICE

Of the Prudential Investment and Security Company.

Location of principal place of business, Carson City, Nevada. Notice is hereby given that at a meeting of the Board of Directors held at the office of the company at No. 16, N. Carson street, Carson City, Nevada, held on the 7th day of April, 1906 an assessment (No. 2) of ten dollars per share was levied upon the capital stock of the corporation, payable to the Secretary on or before Tuesday the 8th day of May, 1906, at the office of the company at 116 N. Carson street, in Carson City, Nevada or at the executive of the company at Room 742, in the James Flood building in the City and County of San Francisco, State of California. Any stock upon which this assessment shall remain unpaid on Saturday the 12th day of May, 1906 will be delinquent and advertised for sale at public auction; and unless payment is made before, will be sold on Thursday the 14th day of June, 1906, to pay the delinquent assessment together with costs of advertising and expenses of sale.

By order of the Board of Directors
CHAS. WILSON, Sec.

Principal office, No. 116, N. Carson street, Carson City, Nevada.

Executive office, No. 742, James Flood building, San Francisco, Cal.

ANNUAL STATEMENT

Of the Pacific Mutual Life Insurance Company of California, 508 Montgomery Street, San Francisco, Cal.

Capital paid up \$ 500,000 00
Assets 8,569,223 28
Liabilities, exclusive of capital and net surplus 7,959,049 30
Income
Premiums 2,956,678 25
Other sources 370,578 07
Total income 1905 3,327,256 32
Expenditures
Losses 680,929 05
Dividends 244,343 79
Other expenditures 1,483,208 91
Total expenditures 1905 2,408,481 75
Business 1905
Risks written 178,665,940 00
Premiums received 1,378,773 74
Losses incurred 740,782 90
Nevada Business
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D. F. & P. A., Reno, Nevada J5

EXCURSION RATES EAST

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ANNUAL STATEMENT

Of The Empire State Surety Co. of New York City, New York.

Capital (paid up) \$500,000 00
Assets 951,560 93
Liabilities, exclusive of capital and net surplus 329,536 56
Income
Premiums 439,959 87
Other sources 54,977 00
Total income, 1905 494,936 87
Expenditures
Losses 77,314 35
Dividends 50,000 00
Other expenditures 317,789 68
Total expenditures, 1905 445,104 03
Business, 1905
Risks written none
Premiums thereon 574,541 91
Losses incurred 85,458 43
Nevada Business
None
DANIEL STEWART, Secretary.

ANNUAL STATEMENT

Of The Skandia Insurance Co. Of Stockholm, Sweden.

Capital (deposited) \$ 200,000 00
Assets 1,022,242 19
Liabilities, exclusive of capital and net surplus 682,777 27
Income
Premiums 815,783 19
Other sources 36,298 26
Total income, 1905 852,081 36
Expenditures
Losses 451,270 98
Dividends none
Other expenditures 260,904 19
Total expenditures, 1905 712,175 11
Business, 1905
Risks written 91,362,733 81
Premiums thereon 1,019,867 59
Losses incurred 405,467 34
Nevada Business
None
C. F. SHALLCROSS, U. S. Manager

ANNUAL STATEMENT

Of The New Amsterdam Casualty Co. Of New York City, New York.

Capital (paid up) \$314,400 00
Assets 900,631 52
Liabilities, exclusive of capital and net surplus 481,208 73
Income
Premiums 596,120 21
Other sources 24,591 34
Total income, 1904 620,711 55
Expenditures
Losses 220,936 05
Dividends none
Other expenditures 336,090 52
Total expenditures, 1905 557,026 57
Nevada Business
None
GEO. TAYLOR, Secretary.

ANNUAL STATEMENT

Of The Union Central Life Insurance Co. Of Cincinnati, Ohio.

Capital (paid up) \$ 100,000 00
Assets 49,749,610 43
Liabilities, exclusive of capital and net surplus 41,284,512 37
Income
Premiums 8,233,533 64
Other sources 2,792,221 50
Total income, 1905 11,025,755 14
Expenditures
Losses 2,080,568 23
Dividends 691,876 99
Other expenditures 2,591,066 02
Total expenditures, 1905 5,363,511 98
Business, 1905
Risks written 40,987,438 00
Premiums thereon 1,650,491 29
Losses incurred 1,686,133 20
Nevada Business
Risks written 15,000 00
Premiums received 168 10
Losses incurred none
Losses paid none
E. P. MARSHALL, Secretary.

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